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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs & Border Protection

Modifications to the Section 321 Data Pilot

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: On July 23, 2019, U.S. Customs and Border Protection (CBP) published a general notice in the *Federal Register* (84 FR 35405) announcing the Section 321 Data Pilot, a voluntary pilot in which participants agree to electronically transmit certain advance data elements related to *de minimis* value shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended. The purpose of the pilot is to improve CBP's ability to effectively and efficiently identify and target high-risk shipments, including for narcotics, counter-proliferation, and health and safety risks, in the e-commerce environment. This notice announces that CBP is modifying the Section 321 Data Pilot to include shipments arriving by ocean and to include international mail shipments. This notice also modifies the provisions governing misconduct under the pilot and extends the duration of the pilot an additional twelve months (through August 2021).

DATES: The voluntary pilot began on August 22, 2019, and will run for a total of approximately 24 months, through August 2021. CBP will accept applications from prospective pilot participants at any time until CBP has identified a sufficient number of eligible participants. At this time, the pilot is limited to a maximum of nine participants.

ADDRESSES: Prospective pilot participants should submit an email to e-commerce@smallbusinessbranch@cbp.dhs.gov. In the subject line of your email please indicate “Application for Section 321 Data Pilot.” For information on what to include in the email, see section II.D (Application Process and Acceptance) of the notice published in the *Federal Register* on July 23, 2019 (84 FR 35405).

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Director, IPR & E-Commerce Division at laurie.b.dempsey@cbp.dhs.gov or 202-615-0514 and Daniel Randall, Branch Chief, Manifest & Conveyance Security at 202-344-3282.

SUPPLEMENTARY INFORMATION:

I. Section 321 Data Pilot

On July 23, 2019, CBP published a general notice in the *Federal Register* (84 FR 35405) (hereafter referred to as the July 2019 notice) announcing the voluntary Section 321 Data Pilot. Participants in the Section 321 Data Pilot agree to electronically transmit certain data elements related to *de minimis* value shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended (“section 321 shipments”). Section 321 provides for an administrative exemption from duty and taxes for shipments of merchandise imported by one person on one day having an aggregate fair retail value in the country of shipment of an amount specified by the Secretary by regulation, but not less than \$800. The July 2019 notice provided a description of the Section 321 Data Pilot, the eligibility requirements, and the application process for participation.

The Section 321 Data Pilot is intended to improve CBP’s ability to effectively and efficiently assess the security risks of shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(C)). The

Section 321 Data Pilot tests the feasibility of collecting data elements, beyond those currently required by regulations, and of collecting data from non-traditional entities, such as online marketplaces. The July 2019 notice stated that the pilot would initially be limited to 9 participants and invited participation from all stakeholders in the e-commerce environment, including carriers, brokers, freight forwarders, and online marketplaces. Pilot participants agree to electronically transmit certain advance data elements to CBP regarding section 321 shipments arriving by air, truck, or rail. CBP excluded from the scope of the pilot shipments arriving by ocean, mail shipments covered by 19 CFR part 145, and shipments destined for a Foreign Trade Zone. CBP uses the advance information transmitted through the pilot to identify and target high-risk shipments, including for narcotics, counter-proliferation, and health and safety risks. The results of the Section 321 Data Pilot will help CBP determine whether additional mandatory advance reporting requirements are necessary in the e-commerce environment.

II. Modifications to the Section 321 Data Pilot

This notice announces that CBP is modifying the Section 321 Data Pilot to include shipments arriving by ocean and international mail shipments. This document also modifies the provisions governing misconduct under the pilot and extends the duration of the pilot an additional twelve months.

A. Expansions of the Section 321 Data Pilot to Include Shipments Arriving by Ocean

In the July 2019 notice, CBP stated that the pilot applied to section 321 shipments arriving in the United States by air, truck, or rail. CBP is now expanding the pilot to include shipments arriving by ocean.

As described in detail in the July 2019 notice, CBP receives certain advance electronic data for shipments arriving in the United States by ocean. For example, regulations promulgated pursuant to the Trade Act of 2002 (Pub. L. 107-210, 116 Stat. 933 (Aug. 6, 2002)) require ocean carriers to transmit for each shipment the shipper's name and address, the consignee name and address, a description of the cargo, including the cargo's quantity and weight, and information regarding the vessel's voyage, including carrier code, date of arrival, and point of origin. *See* 19 CFR 4.7a. Additionally, regulations promulgated pursuant to the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884, October 13, 2006 (SAFE Port Act)) require importers and carriers to submit additional data before the cargo is brought to the United States. *See* 19 CFR part 149 (Importer Security Filing or ISF regulations). The data required by the ISF regulations include name and address of the seller, buyer, and manufacturer or supplier, the consignee identifying number, the ship to party (the first deliver-to-party scheduled to receive goods after the goods have been released from custody), country of origin, Harmonized Tariff Schedule of the United States (HTSUS) number, container stuffing location, and the name and address of the consolidator. 19 CFR 149.3(a).

These existing regulatory requirements do not provide CBP with the information necessary to effectively and efficiently assess the security risks of section 321 shipments arriving by ocean. This is because they generally apply to carriers and importers, who may not possess all of the relevant information relating to an e-commerce shipment's supply chain. In addition, the required information does not always adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of

the package. For instance, under the ISF regulations, an importer may list a domestic deconsolidator as the “ship to party”. There is no specific requirement to identify the final recipient of the shipment in the United States. This hinders CBP’s ability to effectively target or identify high-risk shipments and CBP officers must use additional time and resources to inspect section 321 shipments. Expansion of the Section 321 Data Pilot to include shipments arriving by ocean will enable CBP to more effectively target or identify high-risk shipments by requiring additional data elements related to such shipments.

Such expansion will also enable CBP to test the feasibility of collecting advance data from typically non-regulated entities utilizing ocean transportation. It will also enable CBP to collect data regarding additional relevant shipments. Based on the initial operation of the pilot, CBP has learned that many e-commerce entities utilize all modes of transportation and that excluding ocean shipments from the pilot would exclude a substantial number of relevant shipments of potential participants. By expanding the scope of the pilot to include all modes of shipment (air, rail, truck, and ocean), the results of the pilot will be more relevant to possible future regulatory effects, trade facilitation benefits, or other initiatives in the e-commerce environment as a whole. For these reasons, CBP is expanding the Section 321 Data Pilot to include shipments arriving in the United States by ocean.

B. Expansion of the Section 321 Data Pilot to Include International Mail Shipments

The July 2019 notice stated that the Section 321 Data Pilot would not apply to mail shipments covered by 19 CFR part 145. Part 145 applies to mail importations that are subject to Customs examination. CBP has determined that excluding these mail

shipments from the pilot decreases CBP's ability to develop strategies for section 321 shipments as a whole because it is common in the e-commerce environment for entities to use international mail to ship section 321 shipments. CBP has also learned through the initial operation of the pilot that excluding international mail shipments may impose an additional burden on pilot participants because they would need to separate data relating to mail shipments from data relating to other section 321 shipments.

Accordingly, CBP is expanding the pilot to include section 321 shipments covered by 19 CFR part 145.¹ (Shipments destined for a Foreign Trade Zone continue to be excluded from the scope of the pilot.)

C. New Misconduct Section

The July 2019 notice included a section VI, entitled "Misconduct Under the Pilot", which described the penalties CBP may impose on pilot participants for misconduct and the applicable procedures. CBP is revising the section VI language to clarify that those pilot participants who are unable to provide data elements contemplated by this test will not be subject to civil or criminal penalties, administrative sanctions, or liquidated damages solely for such inability. However, the revised language clarifies that test participants who repeatedly provide false, inaccurate or misleading data will be subject, at CBP's discretion, to civil and criminal penalties, administrative sanctions, liquidated damages or removal from participation. Additionally, the revised language clarifies that CBP may immediately remove a participant from the pilot for the repeated failure to provide data or the repeated submission of false, inaccurate or misleading data.

¹ Under current regulations, there is no requirement to submit advance electronic data to CBP for mail shipments. However, section 8003 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (Pub. L. 115-271, 123 Stat. 4073) (STOP Act of 2018), requires CBP to issue regulations requiring the U.S. Postal Service to transmit certain advance electronic data to CBP for international mail shipments. CBP is in the process of drafting those regulations.

CBP is also replacing the phrase “discontinuance from participation” with “removal from participation” for clarity. The language below replaces in full the misconduct section in the July 2019 notice and reads as follows:

VI. Misconduct Under the Pilot

A pilot participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or removal from participation in the Section 321 Data Pilot for any of the following:

- (1) Failure to follow the rules, terms, and conditions of this pilot;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- or
- (3) Failure to abide by applicable laws and regulations.

Test participants who are unable to provide data elements contemplated by this test will not be subject to civil and criminal penalties, administrative sanctions, or liquidated damages solely for such inability. Test participants who repeatedly provide false, inaccurate or misleading data will be subject, at CBP’s discretion, to civil and criminal penalties, administrative sanctions, liquidated damages or removal from participation.

If the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, finds that there is a basis for removal of pilot participation privileges, the pilot participant will be provided a written notice proposing the removal with a description of the facts or conduct warranting the action. The pilot participant will be offered the opportunity to appeal the decision in writing within 10 calendar days of receipt of the written notice. The appeal of this

determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing e-commercesmallbusinessbranch@cbp.dhs.gov.

The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed removal of a pilot participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the pilot participant.

In cases of willfulness, the repeated failure to provide data, the repeated submission of false, inaccurate or misleading data, or those in which public health, interest, or safety so requires, the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, may immediately remove the pilot participant's privileges upon written notice to the pilot participant. The notice will contain a description of the facts or conduct warranting the immediate action. The pilot participant will be offered the opportunity to appeal the decision within 10 calendar days of receipt of the written notice providing for immediate removal from participation. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing ecommercesmallbusinessbranch@cbp.dhs.gov.

The immediate removal will remain in effect during the appeal period. The Executive Director, Trade Policy and Programs, Office of Trade, will issue a

decision in writing on the removal within 15 working days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

D. Twelve Month Extension

The Section 321 Data Pilot was originally intended to run for approximately one year. CBP is extending the pilot to run an additional twelve months, through August 2021. The additional time is necessary in order for pilot participants to modify their communication systems in order to execute the provisions of the pilot and for CBP to collect a sufficient amount of data from the participants.

Subject to the amendments herein, all other provisions of the July 2019 notice, except for section “VI. Misconduct Under the Pilot,” remain applicable to the Section 321 Data Pilot. CBP reiterates that it is not waiving any regulations for purposes of the pilot. All of the existing regulations, including the Trade Act of 2002 requirements and the ISF regulations described above, continue to apply to pilot participants.

DATE: December 4, 2019

Robert E. Perez
Deputy Commissioner
U.S. Customs and Border Protection

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